

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MITCHELL DEMARCUS HALL,

Defendant.

No. 15-CR-62-LRR

ORDER

The following matters are before the court: (1) United States Chief Magistrate Judge Jon S. Scoles’s “Report and Recommendation” (“First Report and Recommendation”) (docket no. 17), which recommends that the court accept Defendant Mitchell Demarcus Hall’s conditional guilty plea; (2) Judge Scoles’s “Report and Recommendation” (“Second Report and Recommendation”) (docket no. 21), which recommends that the court grant Defendant’s Motion to Suppress (docket no. 7); (3) Defendant’s Motion to Withdraw Guilty Plea (docket no. 22); and (4) the government’s Unopposed Motion for Leave to Dismiss (docket no. 24).

On July 14, 2015, the grand jury returned a one-count Indictment (docket no. 2) charging Defendant with possession of a firearm and ammunition by a felon and unlawful user of marijuana, in violation of 18 U.S.C. §§ 922(g)(1) & (3). On July 31, 2015, Defendant filed the Motion to Suppress, which requests that the court suppress all evidence and statements obtained as a result of the stop and search of Defendant’s vehicle on May 23, 2015. On August 7, 2015, the government filed a Resistance (docket no. 9). On August 12, 2015, Judge Scoles held a hearing on the Motion to Suppress. *See* Minute Entry (docket no. 10). Defendant appeared in court with his attorney, Jill M. Johnston. Assistant United States Attorney Anthony Morfitt represented the government. On August 27, 2015, while the Motion to Suppress was under advisement, Defendant entered a

conditional guilty plea to count 1 of the Indictment. *See* Minute Entry (docket no. 16). That same day, Judge Scoles filed the First Report and Recommendation, recommending that the court accept Defendant's conditional guilty plea. On September 10, 2015, Judge Scoles filed the Second Report and Recommendation, recommending that the court grant the Motion to Suppress. On September 17, 2015, Defendant filed the Motion to Withdraw Guilty Plea in light of Judge Scoles's Second Report and Recommendation. On September 22, 2015, the government filed a notice (docket no. 23) stating they would make no objections to the Second Report and Recommendation or the Motion to Withdraw Guilty Plea. That same day, the government filed the Unopposed Motion for Leave to Dismiss, which requests leave of court to dismiss the pending Indictment against Defendant without prejudice in the event the court grants the Motion to Suppress and the Motion to Withdraw Guilty Plea.

The government has provided notice of no objections to the Second Report and Recommendation and has, thus, waived its right to a de novo review of the Second Report and Recommendation. *See, e.g., United States v. Newton*, 259 F.3d 964, 966 (8th Cir. 2001) (“[A party’s] failure to file any objections waived his right to de novo review by the district court of any portion of the report and recommendation of the magistrate judge as well as his right to appeal from the findings of fact contained therein.” (quoting *Griffini v. Mitchell*, 31 F.3d 690, 692 (8th Cir. 1994))). Finding no plain error, the court shall adopt Judge Scoles's Second Report and Recommendation in whole.

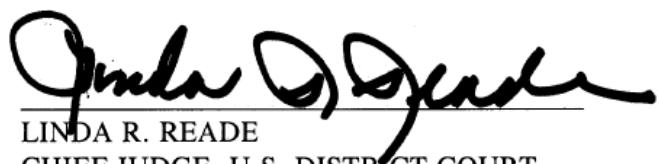
Accordingly, it is hereby **ORDERED**:

- (1) The Second Report and Recommendation (docket no. 21) is **ADOPTED**.
- (2) Defendant's Motion to Suppress (docket no. 7) is **GRANTED**.
- (3) Defendant's Motion to Withdraw Guilty Plea (docket no. 22) is **GRANTED**.

- (4) The clerk's office is **DIRECTED** to satisfy the First Report and Recommendation (docket no. 17).
- (5) The government's Unopposed Motion for Leave to Dismiss (docket no. 24) is **GRANTED**.
- (6) Defendant shall be **RELEASED** from custody immediately.

IT IS SO ORDERED.

DATED this 22nd day of September, 2015.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA